

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.256 of 2004

- 1.Church of South India Trust Association
Tiruchirapalli-Thanjavur Diocesan Council
represented by its Diocesan Treasurer
Mr.R.Sureshkumar
- 2.Church of South India Trust Association
Tiruchirapalli-Thanjavur Diocesan Council
represented by its Secretary,
Paul Vaasanthakumar
- 3.paul Vasanthakumar, Kuruthuva Secretary of
Church of South India Trust Association
Tiruchirapalli-Thanjavur Diocesan Council.
- 4.Rev.Chinnaparaj, President
Dharapuram Diocese. ... Petitioners/Petitioners/Plaintiffs.

vs.

- 1.KovilPillai
- 2.Samiyathal
- 3.Sukumaran
- 4.Dhanapal
- 5.Gnanamani
- 6.Ramani
- 7.The Commissioner
Dharapuram Municipality
Dharapuram Town
- 8.The District Collector
Collectorate, Erode, Dharapuram Taluk & Dist.
- 9.The Tahsildar
Taluk Office, Dharapuram Town & Taluk.
.. Respondents/Respondents/Defendants.

Revision Petition filed against the order dated 13.1.2004, passed in I.A.No.2128/2003 in O.S.No.249/1990 on the file of the District Munsif Court, Dharapuram.

For Petitioners : M/s.F.X.A.F.Denny
For Respondents : Mr.V.Meenakshisundaram
1 to 6.

ORDER:

This Revision Petition has been filed against the order dated 13.1.2004, passed in I.A.No.2128/2003 in O.S.No.249/1990 on the file of the District Munsif Court, Dharapuram.

2.The plaintiffs in O.S.No.249/1990 on the file of the District Munsif, Dharapuram are the revision petitioners. They are aggrieved by the order of the trial court dated 13.1.2004 by which the amendment application filed by them in I.A.No.2128/2003 is dismissed.

3.The plaintiffs filed O.S.No.249/1990 for a declaration to declare that the suit properties belong to them and for a mandatory injunction to remove the construction put up by defendants 1 to 6 on the suit schedule properties. The plaintiffs' case is that they have been in continuous possession of the suit schedule property on the basis of the acquisition proceedings of the revenue authorities dated 2.4.1916. 7th defendant who is the Commissioner of the Dharapuram municipality filed a written statement in March 1992 stating that the suit property belonged to municipality and it was acquired for their purpose. 9th defendant who is the Tahsildar in his written statement filed on 22.12.1998 stated that the patta of the suit properties stood in the name of the municipality but the same was converted into Natham Poramboke by G.O.No.761/Revenue Department dated 13.8.96 and therefore it belonged to Government.

4.While so, in December 2003, the plaintiffs filed I.A.No.2128/2003 under Order 6 Rule 17 CPC to add the following in the body of the plaint at the end of para 7 of the plaint:

"The plaintiffs' possession of the suit property admittedly, originates on 2.4.1916. If for any reason this Hon'ble court comes to the conclusion that the acquisition proceedings for 6 acres including the suit property in the year 1916 did not include the interest of the Methodist Mission, into whose shoes, the Church of South India had stepped in, the Methodist Mission and subsequently, the Church of South India have perfected title by adverse possession of the suit property right from the date 2.4.1916 till date. The plaintiffs further submit that the continuation and exclusive possession and enjoyment in the hands of the Methodist Mission land subsequently the CSI which could be characterised only as a possession by the church which was constructed in the year 1916 itself, would

lead to the characterisation of the suit property, only as a temple site into which do main the Government has no locus standi in view of Section 2(1)(e) of the Tamil Nadu Land Land Encroachment Act 1905".

5.Th plaintiffs also wanted an alternative prayer in the prayer column after the existing prayer which reads as under:

"and alternatively declare that the Methodist Mission land subsequently the Church of South India had perfected title in the suit property by adverse possession right from 2.4.1916 till date."

6.This Application was opposed by 1st defendant by filing a counter on the ground that when the suit was pending for 13 years, the Application has been filed only to further protract the litigation and the alternative prayer would lead to a new cause of action and alter the character of the suit.

7.The trial court by order dated 13.1.2003 dismissed the Application on the ground that it is belated and it would alter the character of the suit. Aggrieved by the same, the above Civil Revision Petition has been filed under Article 227 of the Constitution of India.

8.Heard the learned counsel for the Revision Petitioners and the learned counsel for respondents 1 to 6. I have also perused the documents and the judgments referred to by them in support of their submissions.

9.The learned counsel for the revision petitioners submitted that the trial court failed to take note of the settled legal principles that amendment could be ordered at any time on terms and the alternative prayer sought for in the amendment in addition to the existing prayer would not alter the nature and character of the suit.

10.The learned counsel relied on the following decisions in support of his submissions:

- 1)AIR 1997 Mad.368 (Md.Salih v. T.C.Adam)
- 2)1997(2)CTC 12(Muthammal v. Thamburati)
- 3)2004(2)M.L.J.80(Kantharaju v. Dr.N.Kuppuswami)
- 4)2004(2)M.L.J.211(Sengodan v. Sengodan)
- 5)2004(2)M.L.J.411(Sarammal v. Dilshad Begum)
- 6)2004(2)M.L.J.620(Gunaseelan v. Thamilselvi)

11.Per contra, the learned counsel for respondents 1 to 6 submitted that the amendment sought for would definitely alter the nature and character of the suit and the huge delay is rightly put against the petitioners by the trial court.

12.I have considered the rival submissions carefully with regard to facts and citations.

13.A perusal of the judgments cited by the learned counsel for the petitioners would bring out the following principles that are governing the Application filed under Order 6 Rule 17 CPC:

1)Amendment to the pleadings cannot be turned down by courts merely on the score that they introduce an inconsistent plea or a new cause of action.

2)The true test is whether the amendment is foreign to the subject matter of the suit and if not whether it would be in the interest of justice to grant it.

3)Amendment may be allowed irrespective of law of limitation, if the cause of action is not going to be changed and in the interest of justice.

4)Since the amendment of the plaint being the discretion of the court, it need not be refused on technical grounds.

5)Alternative relief sought by way of amendment can be allowed even if belated, but the other side should be compensated with costs.

6)Allowing of this Application is a rule and rejection is an exception.

7)Pre-trial amendment are to be allowed more liberally than those which are sought to be made after the commencement of trial or after the conclusion thereof.

8)If it is permissible for the plaintiff to file an independent suit, there is no difficulty in accepting his Application for amendment of plaint.

14.Now let me consider the facts of the present case in the light of the above well settled legal principles.

15.The main prayer in the suit is for a declaration to declare that the suit property belongs to the plaintiffs on the basis of their uninterrupted possession. The municipality in their written statement contended that the property belonged to them and the Tahsildar on 22.12.1998 filed a written statement stating that the property belonged to the Government. In such circumstances, the amendment Application was filed for an alternative prayer of perfection of title by adverse possession and also a descriptive para to be added in the plaint to this effect.

16.It is true that the suit has been pending from 1990 onwards, but the written statement of the Tahsildar was filed only in December 1998. Further, delay alone is not the criterion to reject an Application filed under Order 6 Rule 17 CPC. If the proposed amendment does not bring in a

new cause of action or does not alter the nature and character of the suit, the same could be allowed, even if it is belated by ordering cost to the other side by way of compensation.

17.The trial court observed that the trial has commenced and the suit is posted for cross-examination of defendants 7 to 9 and therefore the amendment Application if allowed would further delay the proceedings. This reasoning given by the trial court is not correct as amendment could be ordered at any time at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties. Further in my considered view the proposed alternative prayer and the addition of description in the plaint would not alter the nature and character of the suit and in fact it is in consonance with the pleadings of the plaintiffs pleading that they have been in possession of the property right from 2.4.1916. It is also pertinent to add that neither the Government nor the municipality have filed a counter opposing the amendment application.

18.Hence I am inclined to interfere with the orders of the trial court. Accordingly the order of the trial court dated 13.1.2004 is set aside and I.A.No.2128/2003 is allowed as prayed for on condition, the plaintiffs/revision petitioners should pay a sum of Rs.3,000/- to respondents 1 to 6 herein within 3 weeks from the date of receipt of the order. On such compliance of the payment of Rs.3,000/-, the trial court is directed to permit the revision petitioners/plaintiffs to carryout the amendment. On such amendment is being carried out, the defendants in the suit are at liberty to file additional written statements, documents, if any and to let in further evidence in this regard. It is also made clear that if the plaintiffs/revision petitioners fail to comply with the direction of payment of cost within the time stipulated above, the Civil Revision Petition shall stand dismissed and the order of the trial court dated 13.1.2004 is restored automatically without further reference to this court.

19.Considering the fact that the suit has been pending for the past 17 years, the trial court is directed to show utmost urgency and conduct the proceedings preferably on day-to-day basis and dispose of the suit itself within 8 months from today.

20.With the above directions, the above Civil Revision Petition is allowed. No costs. C.M.P.No.2776/2004 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

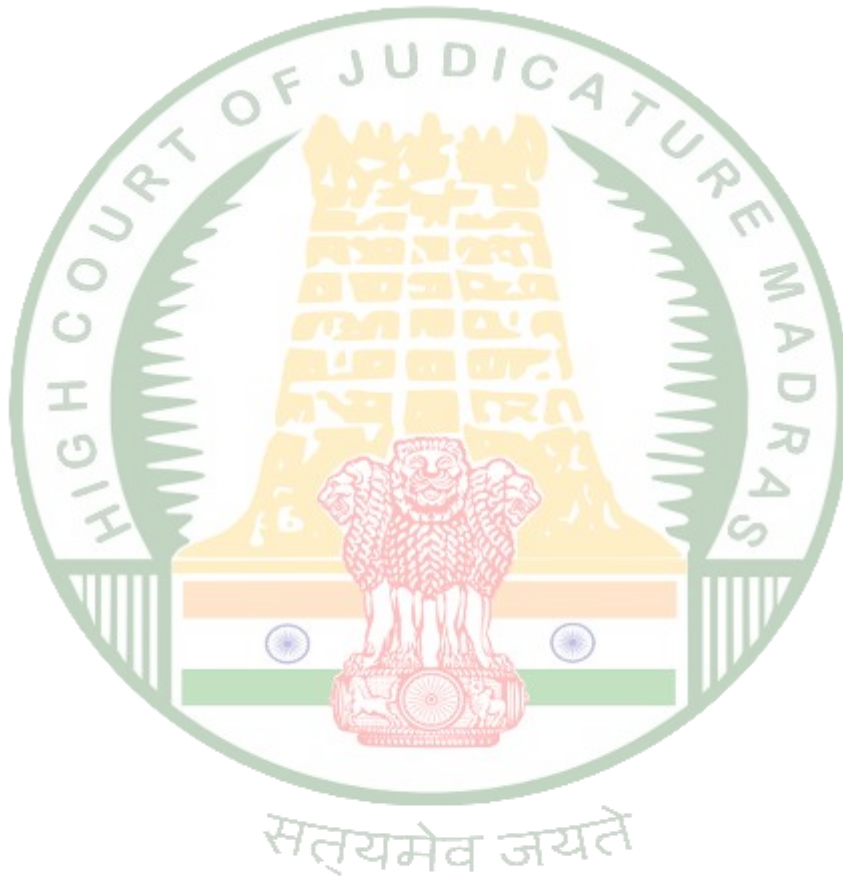
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To
1. The District Munsif,
Dharapuram.

+ 1 CC to Mr.F.X.A.Denny, Advocate SR NO 32844

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